

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ENVIRONMENTAL AND ANIMAL
DEFENSE**

501 S. Cherry Street, Suite 1100
Denver, CO 80246;

Plaintiff,

v.

U.S. FISH AND WILDLIFE

SERVICE, a federal agency

1849 C St, N.W.

Washington, DC 20240;

U.S. DEPARTMENT OF THE

INTERIOR, a federal agency

1849 C Street, N.W.

Washington, DC 20240;

Defendants.

Civil Action No. 1:19-cv-1663

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Environmental and Animal Defense (“eaDefense”), a conservation organization, brings this case against the United States Department of the Interior (“DOI”) and the U.S. Fish and Wildlife Service (“FWS”) for violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. §§552 *et seq.* related to eaDefense’s request of records concerning land proposed for development in El Paso County, Colorado, in and around Beaver Creek in Unit 11 of the Preble’s Meadow jumping mouse (“PMJM”) critical habitat.

2. eaDefense submitted a FOIA request on February 6, 2019 (“FOIA Request”) requesting records related to the PMJM, critical habitat, and

determinations of impacts to habitat.

3. On February 11, 2019 FWS electronically provided a tracking number for the request, FWS-2019-00389, and suggested scheduling a conference call.

4. Since that time there have been several communications between eaDefense and FWS wherein eaDefense sought to obtain information from FWS regarding the agency's progress on eaDefense's FOIA request.

5. To date, FWS has not produced the requested records.

6. At no time has FWS stated that it has conducted the search of the records, that any of the records were exempt from production, that a determination of eaDefense's search was made, or when responsive records would be produced.

7. Contrary to FOIA's mandate to make responsive records promptly available (5 U.S.C. § 552 (a)(6)), FWS failed to make a determination on eaDefense's FOIA Request within the statutory time limit. FWS has failed to provide prompt access to any of the agency records described by eaDefense's FOIA Request.

8. By violating FOIA, Defendants have violated eaDefense's right to promptly access agency records not subject to a recognized FOIA exemption upon filing a written request, a statutory right that each FOIA requester enjoys regardless of the requester's purpose. 5 U.S.C. § 552.

9. The withholding of agency records not subject to one of FOIA's nine recognized exemptions (5 U.S.C. § 552 (b)) denies eaDefense's FOIA right to promptly access information necessary to carry out its organizational mission. eaDefense's organizational mission includes participation in rulemakings involving the statutorily established public land management and environmental decision-making processes carried out, overseen, and authorized by FWS and DOI.

JURISDICTION AND VENUE

10. Jurisdiction over this action is conferred by FOIA, 5 U.S.C. § 552(a)(4)(B), § 702, and 28 U.S.C. §§ 1331 (federal question). This cause of action

arises under the Freedom of Information Act, a law of the United States. An actual, justiciable controversy exists between Plaintiff and Defendant.

11. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B), which provides venue in the District of Columbia for all FOIA cases, and 28 U.S.C. § 1391(e) because the United States is a defendant and a significant part of the acts and omissions giving rise to Plaintiff's cause of action occur in this judicial district.

12. Declaratory relief is appropriate under 28 U.S.C. § 2201.

13. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

14. This Court has statutory authority to award costs and attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E).

15. In addition to *de novo* review and authority to compel agency FOIA compliance, this Court has statutory authority to refer this matter to the Special Counsel to investigate and make binding recommendations to remedy the potentially arbitrary and capricious circumstances surrounding the agency's withholding of records. 5 U.S.C. § 552(a)(4)(F).

16. "In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member." 5 U.S.C. § 552(a)(4)(G).

17. Plaintiff has exhausted any and all administrative remedies in connection with its FOIA requests, as detailed below.

PARTIES

18. Plaintiff Environmental and Animal Defense ("eaDefense") is a non-profit conservation organization dedicated preservation of wild and domestic species alike. eaDefense's office is located in Colorado.

19. Any person who files a FOIA request is deemed to have standing to invoke the jurisdiction of the Federal Courts to carry out the judicial review

provisions of FOIA. eaDefense filed the FOIA Request at issue and has standing to bring this FOIA suit.

20. eaDefense brings this action on its own behalf and on behalf of its adversely affected members. eaDefense works to sustain habitat for wild species to ensure their survival for future generations.

21. eaDefense works in furtherance of its goals in part by acquiring information regarding federal programs and activities through FOIA. eaDefense then compiles and analyzes that information and, subsequently, disseminates that information to its membership, the general public, and public officials through various sources including publications, reports, its website and newsletter, general news media coverage, and public presentations. eaDefense's efforts at educating the public on issues concerning federal government programs and activities that affect the environment contribute significantly to the public's understanding of governmental operations and activities. eaDefense also uses the information that it acquires through FOIA to participate in federal and state decision-making processes, to file administrative appeals and civil actions, and generally to ensure that federal and government agencies comply with federal environmental laws.

22. eaDefense regularly uses FOIA as an important avenue for gaining information about agency activities. eaDefense is harmed when it is denied timely access to documents to which it is entitled. eaDefense intends to continue its use of FOIA to access agency records in the possession of Defendants. Specifically, eaDefense has concrete plans to submit FOIA requests to FWS as eaDefense's advocacy and rulemaking efforts continue, and to follow up on the information learned while reviewing agency records responsive to the present FOIA Request.

23. One of the purposes of FOIA is to promote the active oversight role of public advocacy groups incorporated in many federal laws applicable to federal agencies, including the Administrative Procedure Act. *See, e.g.*, 5 U.S.C. § 551, *et*

seq. eaDefense uses FOIA to publicize activities of federal agencies and to mobilize the public to participate in the management of public land and other public resources. eaDefense intends to continue using FOIA requests to fulfill its oversight and advocacy role through scrutinizing agency records, a practice Congress intended to promote through the adoption of FOIA.

24. The above-described interests of eaDefense, its staff, and its members have been, are being, and, unless the relief prayed for herein is granted, will continue to be adversely affected by the Defendants' failure to comply with the statutory requirements of FOIA. A favorable outcome of this litigation will redress that injury. Defendants' refusals to provide timely FOIA access to agency records prevent eaDefense's informed involvement in Defendants' time-limited opportunities to participate in administrative processes. Harm to endangered species flows from Defendants' FOIA violations, which conceal the facts and circumstances of FWS's inaction and planned continued inaction to development in critical habitat for the PMJM. eaDefense brings this action on behalf of itself, its staff, and its members.

25. Defendant UNITED STATES FISH AND WILDLIFE SERVICES ("FWS") is an agency as defined by 5 U.S.C. § 552(f)(1). FOIA charges FWS with the duty to provide public access to agency records in its possession or control. FWS possesses records responsive to eaDefense's FOIA Request. FWS is denying eaDefense access to its records in contravention of federal law.

26. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY ("Office of the Secretary") is an agency as defined by 5 U.S.C. § 552(f)(1). FOIA charges the Office of the Secretary with the duty to provide public access to agency records in its possession or control. The Office of the Secretary possesses records requested by eaDefense. The Office of the Secretary is denying eaDefense access to its records in contravention of federal law. The Office of

the Secretary oversees the Office of the Solicitor, which provides inside counsel services to FWS and other DOI bureaus and departments.

STATUTORY BACKGROUND

Freedom of Information Act

27. FOIA imposes strict and rigorous deadlines on federal agencies when they receive a request for records pursuant to FOIA. Specifically, an agency must determine whether to disclose responsive records and notify the requester of its determination within 20 working days of receiving a FOIA request. *Id.* § 552(a)(6)(A). It must also make the responsive records “promptly” available, unless it can establish that certain unusual circumstances are present and/or that it may lawfully withhold records, or portions thereof, from disclosure. *Id.* § 552(a)(6). Additionally, within 20 working days, the agency must inform the requester that it has a right to appeal the agency’s determination. *Id.* § 552(a)(6)(A)(i)(III)(aa).

28. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

29. Congress has specified limited circumstances in which federal agencies may obtain more time to make the determination that is required by 5 U.S.C. § 552(a)(6)(A)(i).

30. First, an agency may toll the 20-working-day deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii).

31. Second, an agency may extend the 20-working-day deadline for an additional 10 working days by giving a written notice to the requester that sets forth “unusual circumstances” to justify a deadline extension, which also requires that it provide the date by which the agency expects to make the determination. *Id.* § 552(a)(6)(B)(i). However, to invoke such “unusual circumstances,” the agency must provide the requester with “an opportunity to limit the scope of the request so that

it may be processed within [20 working days] or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” *Id.* § 552(a)(6)(B)(ii). In addition, when asserting unusual circumstances, the agency “shall make available its FOIA Public Liaison” to “assist in the resolution of any disputes between the requester and the agency.” *Id.*

32. FOIA requires each agency to make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records that are responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

33. FOIA requires federal agencies to promptly and expeditiously disclose requested records, *see id.* § 552, and mandates a policy of broad disclosure of government records. Any inquiry under FOIA brings with it a strong presumption in favor of disclosure.

34. Congress recognized that in certain, limited instances, records may be withheld as exempt from FOIA’s broad disclosure mandate, and thus it created nine categories of exemptions. *Id.* § 552(b). These exemptions, however, are narrowly construed in light of FOIA’s dominant objective of disclosure, not secrecy.

35. FOIA provides that a request for records must be “reasonably described.” *Id.* § 552(a)(3)(A)(i). Courts have determined that a FOIA request reasonably describes the requested records so long as the agency’s records custodian can locate the records.

36. The U.S. District Courts have jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

37. Alternatively, an agency’s response to a FOIA request and/or a FOIA appeal is subject to judicial review under the APA, which confers a right of judicial review on any person who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is unlawfully withheld or

unreasonably delayed. *Id.* § 706(1). District Courts must set aside any agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

FACTUAL BACKGROUND

38. eaDefense submitted a FOIA request on February 6, 2019 (“FOIA Request”) sent via email to fw6_foia@fws.gov.

39. eaDefense’s request asked for:

1. The area of land as legally described in section 4. This land is proposed for development by Classic Homes and is known as Phase II of the Forest Lakes Development Project in El Paso County, Colorado.
2. Classic Homes and the Forest Lake Development Project whether or not associated with Phase II of the development or the land as legally described in section 4.
3. The Preble’s Meadow jumping mouse and critical habitat near and around the areas of Beaver Creek, Hells Creek, North Beaver Creek, and South Beaver Creek as is featured in the critical habitat designation map described as Unit 11 and named on that map solely as Beaver Creek.
4. A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 28, AND THE SOUTHEAST QUARTER OF SECTION 29 ALL IN TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS [legal description of land].

40. On February 7, 2019 FWS electronically provided notice it received eaDefense’s request.

41. On February 11, 2019 FWS electronically provided a tracking number for the request, FWS-2019-00389, and suggested a conference call to discuss the request.

42. eaDefense made itself available for phone calls and called numerous times until requesting a call be scheduled for a particular date and time on March 7, 2019.

43. FWS made clear during the conference call that it thought the breadth of eaDefense's request was ridiculous, but that it would provide some documents as part of an attempt to clarify the breadth of the request.

44. After prompting, on March 23, 2019, FWS released a sample of 12 documents to eaDefense. FWS also included a response letter, stating in part "[o]n March 14, 2019, we discussed the scope of your request. Specifically, the overly broad nature of your request. In an effort to seek clarification, it was agreed to first provide documents related to Phase II of the Forest Lake Development Project, and the Preble's Meadow jumping mouse habitat; and any past FOIA request regarding the Preble's mouse. It was also discussed, that if these documents do not satisfy your request, we would continue to process the remainder of your request, but would need further clarification."

45. On March 26, eaDefense requested that the remainder of documents requested be released, stating in part that "[w]hile Environmental and Animal Defense is sympathetic towards the FWS's perspective of pulling records from several decades, the length of time for the records sought does not make the request overly broad, as the Forest Lakes Development project is several decades old. Thus, the documents related to it from several decades ago are relevant as the project has changed multiple times. Those project changes, and documents relating to those changes, are of key importance to this FOIA Request."

46. That same day FWS requested clarification that the request sought

information related to both the Preble's Meadow jumping mouse and what was referred to in the request as the Forest Lakes Development.

47. In response to eaDefense's statement that the request was for both the mouse and the development, on March 29, 2019, FWS stated that it would respond soon.

48. eaDefense requested a status update on the Request on May 7th, 2019.

49. On May 8, 2019, FWS stated that the person handling the request was reassigned and would connect eaDefense with the new request handler.

50. FWS never stated when it would search for or complete eaDefense's request.

51. At no point did FWS state that it had gathered and reviewed the documents responsive to eaDefense's request or that it had determined the scope of the documents it intended to produce or withhold.

52. As of the date of this filing, it has been over four months since the date of eaDefense's FOIA Request.

53. Production of the requested records in a timely fashion is critically important because: 1) eaDefense has been an active participant in the public process concerning the aforementioned proposed development before local government; 2) the development will or has already sought permits under the Clean Water Act that may soon open for public comment; 3) the development is quickly moving forward with intent to construct in areas that will effect critical habitat for species listed under the Endangered Species Act.

54. The deadline for FWS to issue the final determination required by 5 U.S.C. § 552(a)(6)(A)(i) for all records subject to eaDefense's FOIA Request has passed. As of the date this action was filed, FWS has not provided eaDefense with the determinations required by 5 U.S.C. § 552(a)(6)(A)(i) for all records subject to eaDefense's FOIA Request.

55. As of the date this action was filed, FWS has failed to provide eaDefense with all non-exempt documents that are responsive to eaDefense's FOIA Request.

56. As of the date this action was filed, FWS has failed to make promptly available to eaDefense all non-exempt documents that are responsive to eaDefense's FOIA Request.

57. FWS is currently withholding from eaDefense non-exempt documents that are responsive to eaDefense's FOIA Request. None of FOIA's nine exemptions to mandatory disclosure apply to the documents and information FWS is currently withholding from eaDefense. FWS has no legal basis for withholding the records that eaDefense sought via eaDefense's FOIA Request.

58. Prior to filing this action, eaDefense fully exhausted all administrative remedies required by the FOIA. 5 U.S.C. § 552(a)(6)(A), (a)(6)(C).

59. eaDefense has been required to expend costs to prosecute this action.

60. The filing of this lawsuit was necessary to compel FWS to make the determinations required by 5 U.S.C. § 552(a)(6)(A)(i) for all documents subject to eaDefense's FOIA Request.

61. The filing of this lawsuit was necessary to compel FWS to disclose all non-exempt documents and information that are responsive to eaDefense's FOIA Request.

62. FWS could have made the determinations required by 5 U.S.C. § 552(a)(6)(A)(i) for all records subject to eaDefense's FOIA Request before eaDefense filed this lawsuit. FWS could have disclosed all records responsive to eaDefense's FOIA request before eaDefense filed this lawsuit.

63. eaDefense's claims for relief in this Complaint are not insubstantial. FWS's failure to respond to eaDefense's FOIA Request is harming eaDefense and may hinder eaDefense's ability to effectively engage FWS's actions or inactions concerning the aforementioned proposed development.

64. FWS FOIA officers sometimes respond to requesters' follow-up emails and letters by stating that the agency is actively working to respond to a FOIA request when that is not fully accurate.

65. No exceptional circumstances exist that would allow this Court to allow FWS more time to review and disclose requested records. FWS has not exercised due diligence in responding to eaDefense's FOIA Request. The delays at issue in this case result from a predictable circumstances and agency workload of FOIA requests. FWS has not made reasonable progress in reducing its backlog of pending requests.

66. Based on the nature of eaDefense's professional activities, eaDefense will continue to employ the FOIA's provisions in information requests to FWS in the foreseeable future. eaDefense's professional activities will be adversely affected if FWS is allowed to continue violating the FOIA's disclosure provisions. Unless enjoined and made subject to a declaration of eaDefense's legal rights by this Court, FWS will continue to violate the rights of eaDefense to receive public records under the FOIA.

FIRST CLAIM FOR RELIEF

VIOLATION OF THE FREEDOM OF INFORMATION ACT **Failure to Make a Determination on eaDefense's FOIA Request**

67. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

68. eaDefense has a statutory right to a lawful final determination from FWS on its FOIA request, Number FWS-2019-00389, in a manner that complies with FOIA. FWS has violated eaDefense's rights in this regard by unlawfully delaying its response beyond the deadline that FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

69. eaDefense's organizational activities will be adversely affected if FWS is allowed to continue violating FOIA's decision deadlines as it has in this case.

70. Unless enjoined and made subject to a declaration of eaDefense's legal rights by this Court, FWS will continue to violate eaDefense's rights to receive public records under FOIA.

SECOND CLAIM FOR RELIEF

VIOLATION OF THE FREEDOM OF INFORMATION ACT

Failure to Disclose Records Responsive to eaDefense's FOIA Request by the Statutory Deadline

71. eaDefense re-alleges and incorporates all preceding paragraphs as if fully set forth herein.

72. FWS violated FOIA by failing to promptly disclose records that are responsive to eaDefense's FOIA request by the deadline set forth in 5 U.S.C. § 552(a)(6)(C)(i).

73. eaDefense has a statutory right to the records it seeks, and there is no legal basis for FWS to assert that eaDefense did not reasonably describe the records that it seeks.

74. Based on the nature of eaDefense's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FWS in the foreseeable future.

75. eaDefense's organizational activities will be adversely affected if FWS continues to violate FOIA's disclosure provisions as it has in this case.

76. Unless enjoined and made subject to a declaration of eaDefense's legal rights by this Court, FWS will continue to violate eaDefense's rights to receive public records under FOIA.

THIRD CLAIM FOR RELIEF

VIOLATION OF THE FREEDOM OF INFORMATION ACT

Unlawful Withholding/Unlawful Constructive Denial of Records

Responsive to eaDefense's FOIA Request

77. eaDefense re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

78. eaDefense has a statutory right to the records it seeks, and there is no legal basis for FWS to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from eaDefense. See 5 U.S.C. § 552(b)(1)-(9).

79. FWS has unlawfully withheld from disclosure records that are responsive to eaDefense's FOIA Request. Based on the nature of eaDefense's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FWS in the foreseeable future.

80. eaDefense's organizational activities will be adversely affected if FWS continues to violate FOIA's disclosure provisions as it has in this case.

81. Unless enjoined and made subject to a declaration of eaDefense's legal rights by this Court, FWS will continue to violate eaDefense's rights to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF

VIOLATION OF THE FREEDOM OF INFORMATION ACT

**Failure to Conduct an Adequate Search for Records Responsive to
eaDefense's FOIA Request**

82. eaDefense re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

83. eaDefense has a statutory right to have FWS process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). FWS violated eaDefense's rights in this regard when it unlawfully failed to undertake a search that uses a proper cut-off date for the agency's search and that is reasonably

calculated to locate all records that are responsive to FOIA Request Number FWS-2019-00389.

84. Based on the nature of eaDefense's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FWS in the foreseeable future.

85. eaDefense's organizational activities will be adversely affected if FWS continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to eaDefense's FOIA requests.

86. Unless enjoined and made subject to a declaration of eaDefense's legal rights by this Court, FWS will continue to violate eaDefense's rights to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF

VIOLATION OF THE FREEDOM OF INFORMATION ACT

Failure to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records

87. eaDefense re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

88. eaDefense has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

89. FWS violated eaDefense's rights in this regard by unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to FOIA Request Number FWS-2019-00389.

90. Based on the nature of eaDefense's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FWS in the foreseeable future.

91. eaDefense's organizational activities will be adversely affected if FWS is allowed to continue violating FOIA's disclosure provisions as it has in this case.

92. Unless enjoined and made subject to a declaration of eaDefense's legal rights by this Court, FWS will continue to violate eaDefense's rights to receive public records under FOIA.

SIXTH CLAIM FOR RELIEF

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

(In the Alternative to the First through Fifth Claims)

Unlawfully Withheld or Unreasonably Delayed Actions That FOIA

Requires

93. eaDefense re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

94. FWS unlawfully withheld agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) search for and disclose records that are responsive to eaDefense's FOIA Request by the statutory deadline; (2) conduct a search that is reasonably calculated to locate all responsive records to both of these FOIA requests and which utilizes a lawful cut-off date for the search; (3) provide eaDefense with records that are responsive to its FOIA Requests, which are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (4) provide eaDefense with all reasonably segregable portions of responsive records to eaDefense's FOIA Request in the event that records may be subject to an exemption. FWS's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

95. Alternatively, FWS unreasonably delayed agency action by failing to comply with the mandates of FOIA consequent to its failure and refusal to: (1) search for and disclose records that are responsive to eaDefense's FOIA Request by

the statutory deadline; (2) conduct a search that is reasonably calculated to locate all responsive records to both of these FOIA requests and which utilizes a lawful cut-off date for the search; (3) provide eaDefense with records that are responsive to its FOIA Requests, which are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (4) provide eaDefense with all reasonably segregable portions of responsive records to eaDefense's FOIA Request in the event that records may be subject to an exemption. FWS's failures constitute agency actions that are unlawfully withheld, and therefore, these actions are actionable pursuant to the APA, 5 U.S.C. § 706(1).

96. As alleged above, FWS's failure to comply with the mandates of FOIA has injured eaDefense's interests in public oversight of governmental operations and is in violation of its statutory duties under the APA.

97. eaDefense has suffered a legal wrong as a result of FWS's failure to comply with the mandates of FOIA. As alleged above, FWS violated its statutory duties under the APA and injured eaDefense's interests in public oversight of governmental operations.

98. eaDefense has no other adequate remedy at law to redress the violations noted above.

99. eaDefense is entitled to judicial review under the APA, 5 U.S.C. § 702.

SEVENTH CLAIM FOR RELIEF

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

(In the Alternative to the First through Fifth Claims)

Arbitrary and Capricious Violations of FOIA's Requirements

100. eaDefense re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

101. FWS violated FOIA's statutory mandates due to its failure and refusal because it failed to: (1) search for and disclose records that are responsive to

eaDefense's FOIA Request by the statutory deadline; (2) conduct a search that is reasonably calculated to locate all responsive records to both of these FOIA requests and which utilizes a lawful cut-off date for the search; (3) provide eaDefense with records that are responsive to its FOIA Requests, which are not within the scope of any of FOIA's exemptions to mandatory disclosure; and (4) provide eaDefense with all reasonably segregable portions of responsive records to eaDefense's FOIA Request in the event that records may be subject to an exemption. By repeatedly violating FOIA's statutory mandates, FWS's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law and therefore actionable pursuant to the APA, 5 U.S.C. § 706(2)(A).

102. As alleged above, FWS's repeated failure to comply with the mandates of FOIA has injured [eaDefenseGuardian](#)'s interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

103. eaDefense has suffered a legal wrong as a result of FWS's failure to comply with the mandates of FOIA. As alleged above, FWS violated its statutory duties under the APA and injured [eaDefenseGuardian](#)'s interests in public oversight of governmental operations.

104. eaDefense has no other adequate remedy at law to redress the violations noted above.

105. eaDefense is entitled to judicial review under the APA, 5 U.S.C. § 702.

106. FWS failed to "make a determination with respect to" or make available the records related to eaDefense's February 6, 2019 FOIA Request "within twenty days (excepting Saturdays, Sundays, and legal public holidays)" after receiving the request. 5 U.S.C. §§ 552(a)(6)(A)(i), (C).

RELIEF REQUESTED

For the reasons stated above, eaDefense respectfully requests that the Court

grant the following relief:

A. Declare that Defendant violated the Freedom of Information Act by failing to lawfully satisfy eaDefense's February 6, 2019 FOIA request consistent with FOIA, or in the alternative, the Administrative Procedure Act, for the reasons set forth above;

B. Order Defendant to search for any and all responsive records to eaDefense's February 6, 2019 FOIA Request using search methods likely to lead to discovery of all responsive records with the cut-off date for such searches being the date the searches are conducted, and to provide eaDefense, by a date certain, with all non-exempt responsive records and reasonably segregable portions of lawfully exempt records sought in this action;

C. Order Defendant to promptly produce, by date certain, a *Vaughn* index of any responsive records withheld under a claim of exemption, if any, at no cost to eaDefense;

D. Enjoin Defendant from continuing to withhold any and all non-exempt responsive records to eaDefense's request;

E. Retain jurisdiction over this action to ensure the processing of eaDefense's FOIA request and that no agency records are improperly withheld;

F. Award eaDefense its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) and/or award eaDefense its costs and reasonable attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

G. Grant such other and further relief as the Court may deem just and proper.

DATED: June 6, 2019

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